

**[Advisory Opinion 1995-18]**

**MEMORANDUM**

TO: [Name1 withheld], Director  
Dept. of Information Systems & Telecommunications

FROM: Jay Cohen, Chairman  
Ethics Commission

SUBJECT: Request for Advisory Opinion

DATE: October 25, 1995

You have requested an advisory opinion from the Commission regarding whether or not you may accept a particular gift from Bell Atlantic. The gift tendered to you consists of two seats at a dinner honoring Douglas M. Duncan hosted by the Chamber of Commerce on November 3, 1995 at the Lakewood Country Club. The value of the gift is Two Hundred Dollars (\$200.00).

Section 19A-16(c) prohibits your acceptance of any “direct or indirect gift” from any individual or organization which:

- (1) is registered, or must register, as a lobbyist on a matter that is or could be considered by the County agency with which the public employee is affiliated;
- (2) does business with the County agency with which the public employee is affiliated;
- (3) owns or operates a business that is regulated by the County agency with which the public employee is affiliated; or
- (4) has an identifiable economic interest that is different from that of the general public, which the public employee may substantially affect in performing the public employee’s official duties.

As already discussed with your office, in order for us to advise you whether or not Section 19A-16(c) prohibits your acceptance of such a gift, we would first need to know the precise relationship between your department and Bell Atlantic (including its affiliates). For instance: (1) Does Bell Atlantic lobby your department? (2) Does Bell Atlantic do business with your department? (3) Is Bell Atlantic regulated by your department? (4) Can the manner in which you perform your job substantially affect an

identifiable economic interest held by Bell Atlantic? Without complete answers to these questions, we are unable to definitively advise you whether or not you are prohibited under Section 19A-16(c) from accepting this gift.

If it turns out that you are prohibited by Section 19A-16(c) from accepting this gift<sup>1</sup>, then you may ask the Commission for a waiver pursuant to Section 19A-8(a). Please understand, however, that in order for the Ethics Commission to grant such a waiver it would first need to be presented with specific facts upon which it could find the following:

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.

This is a three-part test, each part of which must be established before the Ethics Commission can exercise its discretion to either grant or deny any waiver to the prohibitions contained in Section 19A-16(a) and Section 19A-16(c).

Finally, if you choose to accept the gift please remember that its receipt must be reported on your annual financial disclosure forms.<sup>2</sup>

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<sup>1</sup>There are three exceptions to the provisions of Section 19A-16(c) which could potentially apply to the acceptance of such tickets. [Note: These three exceptions apply only as against the receipt of gifts under subsection (c), and do not permit any solicitation of gifts prohibited under subsection (a).] If you believe that one of these exceptions applies to your case, are able to present detailed facts which would assist the Commission in so determining, and can assure the Commission that neither you nor others working for the County have (directly or indirectly) solicited the gift, please feel free to request a revised Advisory Opinion.

Section 19A-16(d)(1) allows the acceptance of meals and beverages under fifty dollars (\$50.00) per event. If you believe that this exception applies, please provide specific documentation supporting said valuation.

Section 19A-16(d)(4) allows the acceptance of meals and beverages in return for participation in a panel or speaking at a meeting. If you believe that this exception applies, please provide specific documentation regarding the nature of your participation and manner in which you received the invitation to speak.

Section 19A-16(d)(5) allows certain public employees to accept meals and beverages which are “extended to the office”. To date, the Ethics Commission has ruled that those public officials elected to office, and those specifically named in the County Charter, may rely on this exemption in appropriate circumstances. The Ethics Commission has not, however, issued any rulings which would permit a Department Head to accept a gift under this subsection. If you believe that this particular gift should be considered a “courtesy extended to the office” pursuant to Section 19A-16(d)(5)(A), please have your attorney provide the Commission with a detailed legal analysis and argument to support such a position.

<sup>2</sup> There are two exceptions to this reporting requirement:

In conclusion.

If you believe that the acceptance of this gift is prohibited by Section 19A-16(a) and/or Section 19A-16(c) of the Ethics Law, and desire a waiver in order to accept the gift, please provide the Commission with the facts which you believe support a waiver.

If you know that the acceptance of this gift is not prohibited by the Ethics Law because Bell Atlantic does not lobby your department, does no business with your department, is not regulated by your department and has no identifiable interests as noted above, then you may accept the gift and simply report it on your financial disclosure statement. Of course, if you desire the protection of an Advisory Opinion in that regard, please feel free to submit the aforementioned information for our review.

If you believe that your acceptance of this gift is exempted from Section 19A-16(c) by one of the subsections discussed in footnote one supra, please provide us with the additional documentation as identified in that footnote along with any other information which you believe would assist the Commission in analyzing and resolving this matter.

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- (1) Gifts valued at less than fifty dollars (\$50.00) so long as the giver does not (cumulatively) give you more than fifty dollars (\$50.00) in gifts during the year or (cumulatively) give your immediate family more than one hundred dollars in gifts during the year.
  - (2) Gifts received pursuant to Section 19A-16(d)(5).